

Secretary's Order No.: 2012-A-0039

**RE: Approving Final Amendment to 7 DE Admin. Code 1138,
Emission Standards for Hazardous Air Pollutants for Source Categories,
Section 17.0: "Area Source Prepared Feeds Manufacturing Facilities".**

Date of Issuance: November 9, 2012

Effective Date of the Amendment: December 11, 2012

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 17.0, "Area Source Prepared Feeds Manufacturing Facilities". The proposed new Section 17.0 will specifically regulate both new and existing prepared feeds manufacturing facilities located at area sources which primarily engage in manufacturing animal feeds (except cat and dog feeds), and those that add chromium or manganese compounds to the animal feeds. This proposed new section is based upon a federal rule

that the U.S. Environmental Protection Agency (EPA) promulgated at 40 CFR Part 63, Subpart DDDDDDD on January 5, 2010.

The purpose of this proposed regulatory action is to provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds. With regard to the potential health impact of these HAPs, the EPA has identified both manganese and trivalent chromium compounds as Group “D” carcinogens; thus, based upon current information, these compounds cannot be classified as to their human carcinogenicity. From a non-carcinogenic perspective, however, the EPA has indicated that both manganese and trivalent chromium compounds can contribute to health impacts associated with the respiratory system. Additionally, manganese compounds have been linked to health impacts associated with the central nervous system.

The Department’s Division of Air Quality commenced the regulatory development process with Start Action Notice 2011-11. The Department published the proposed regulatory amendment in the August 1, 2012 *Delaware Register of Regulation* and held a public hearing on August 22, 2012. The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated October 9, 2012 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendment is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department’s experts developed the record and drafted the proposed Amendment. While

the Department received public comment from the regulated community at its workshop in June of 2012 (which was then incorporated into the proposed regulation), as noted in the Report, no members of the public attended the aforementioned hearing on August 22, 2012, nor were any comments received from the public by the Department, either at the time of the hearing or prior to the record formally closing in this matter on September 6, 2012.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these Amendments. With the adoption of the regulation amendment to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 15.0, "Area Source Prepared Feeds Manufacturing Facilities", Delaware will be able to mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart DDDDDDD and provide increased protection for Delaware citizens against potential adverse health effects linked to long-term exposure to manganese and trivalent chromium compounds, which can contribute to health impacts associated with, among other issues, the human respiratory system and the central nervous system.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;

3.) The Department held a public hearing on the proposed Amendment on August 22, 2012;

4) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended Amendment does not reflect any change from the proposed regulation Amendment as published in the August 1, 2012, *Delaware Register of Regulations*;

6.) The recommended Amendment should be adopted as final regulation Amendments because Delaware will then be enabled to (1) mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart DDDDDDD; and (2) provide increased protection for Delaware citizens against potential adverse health effects linked to long-term exposure to manganese and trivalent chromium compounds, which can contribute to health impacts associated with, among other issues, the human respiratory system and the central nervous system. Moreover, the regulation amendment is well supported by documents in the record; and

7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

/s/ Collin P. O'Mara

Collin P. O'Mara
Secretary